

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform and	)	WC Docket No. 11-42
Modernization	)	
	)	
Telecommunications Carriers Eligible	)	WC Docket No. 09-197
for Universal Service Support	)	
	)	
Connect America Fund	)	WC Docket No. 10-90

**COMMENTS OF**

**CALAVERAS TELEPHONE COMPANY  
CAL-ORE TELEPHONE CO.  
DUCOR TELEPHONE COMPANY  
FORESTHILL TELEPHONE CO.  
HAPPY VALLEY TELEPHONE COMPANY  
HORNIOS TELEPHONE COMPANY  
KERMAN TELEPHONE CO.  
PINNACLES TELEPHONE CO.  
THE PONDEROSA TELEPHONE CO.  
SIERRA TELEPHONE COMPANY, INC.  
THE SISKIYOU TELEPHONE COMPANY  
VOLCANO TELEPHONE COMPANY  
WINTERHAVEN TELEPHONE COMPANY  
(the "CALIFORNIA SMALL LECs")**

**ON**

**UNITED STATES TELECOM ASSOCIATION'S  
PETITION FOR WAIVER**

October 21, 2016

## I. INTRODUCTION.

Pursuant to DA 16-1144, rel. Oct. 6, 2016, "*Wireline Competition Bureau Seeks Comment on United States Telecom Association's Petition for Waiver*," and 47 C.F.R. § 1.3, Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company and Winterhaven Telephone Company (the "California Small LECs") hereby submit these comments in support of United States Telecom Association's ("USTA") *Petition of USTelecom for Waiver of Lifeline Eligibility Rules*, WC Docket No. 11-42 *et al* (filed October 3, 2016) (the "Petition"), in relation to the Federal Communications Commission's ("FCC") *Third Report and Order, Further Report and Order, and Order on Reconsideration, LifeLine and Link Up Reform and Modernization*, WC 11-42, FCC 16-38, (rel. April 27, 2016) ("*Lifeline Modernization Order*").

The California Small LECs are each small, rural telephone companies serving rural and remote parts of California. In many cases, the California Small LECs are the only reliable option for voice and data service in their service territories, so customers in these areas depend heavily on the California Small LECs for their connectivity to the outside world. Several of the California Small LECs serve low-income populations with high proportions of Lifeline customers. For at least three of the California Small LECs, Lifeline subscribership exceeds 30% of their customer base, and for one company, the percentage is over 50%. As a consequence, the California Small LECs are uniquely affected by changes to the Lifeline program, and customers in these areas stand to lose a lot if reforms to the program result in confusion, uncertainty, or misalignment of qualification requirements.

The California Small LECs support USTA's Petition and urge the FCC to grant the Petition in full. The looming misalignment between federal and state eligibility criteria presents immediate and material concerns for California providers and low-income Californians. If the USTA Petition is not granted, substantial administrative havoc will result from federal-state

eligibility misalignment in California and other states like it,<sup>1</sup> in which the state Lifeline qualifications are well-established and comprehensive but now in conflict with the analogous federal requirements in the *Lifeline Modernization Order*. The California Public Utilities Commission ("CPUC") has not yet acted to implement any aspect of the *Lifeline Modernization Order* or the FCC's revised rules, including the revised eligibility criteria scheduled to take effect on December 2, 2016.<sup>2</sup> As a result of the CPUC's inaction to-date, coupled with the required procedural timing of the CPUC's administrative processes, it is now inevitable that misalignment will occur in California for at least some period of time beginning less than a month and a half from this filing. The Petition should be granted to avoid material harm to California consumers stemming from the disconnect between the state and federal programs.

## **II. THE FCC SHOULD GRANT THE PETITION BECAUSE GOOD CAUSE EXISTS TO WAIVE ITS REVISED ELIGIBILITY RULES UNTIL THE CPUC ACTS TO ALIGN CALIFORNIA'S ELIGIBILITY CRITERIA WITH THE REVISED FEDERAL ELIGIBILITY RULES.**

### **A. The FCC's Revised Rules and Eligibility Misalignment in California.**

The California LifeLine program currently operates peaceably alongside the federal Lifeline program, but this will change unless and until the California program is changed to match the federal program. Today, the California program has its own independent set of California-specific eligibility criteria, some of which overlap with the FCC's current criteria and others of which are unique to California. Under the current rules, the discrepancies are not

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<sup>1</sup> The states in this category as identified by the Petition, include California, Florida, Idaho, Nebraska, Nevada, Oregon, Texas, Utah, Vermont, West Virginia, and the District of Columbia. *Petition*, at 3 at n. 5. The Petition also identifies 16 other states facing misalignment-related issues for other reasons, and the Petition also seeks application of its waiver in those states. *See Petition*, at 3; *id.* at n. 4.

<sup>2</sup> The implementation date had been contingent upon approval by the Office of Management and Budget ("OMB"), but OMB approval was received on October 3, 2016, and the Commission issued a public notice identifying the implementation date for the eligibility criteria as December 2, 2016. *See* FCC DA 16-1133 (rel. October 3, 2016).

problematic because the FCC allows states to rely on their own criteria to establish federal Lifeline eligibility. With implementation of the *Lifeline Modernization Order*, however, the FCC will no longer rely on California's – or any state's – unique eligibility criteria as a coextensive basis for federal program eligibility and support. Due to this development, longstanding inconsistencies in federal-state eligibility criteria that, historically, have been mostly inconsequential, are now highly problematic.

Specifically, under the FCC's revised rules, beginning on December 2, 2016, low-income households who qualify for and receive benefits from the following 6 public purpose programs will be eligible for the federal Lifeline discount: Supplemental Nutrition Assistance Program ("SNAP"), Medicaid, Supplemental Security Income ("SSI"), Federal Public Housing Assistance ("FPHA"), and the Veterans Pension benefit and/or Survivors Pension programs<sup>3</sup>, in addition to, the existing Tribal eligibility criteria. Under the revised rules, the following programs are being eliminated as sources of federal eligibility: Low-Income Home Energy Assistance Program ("LIHEAP"), National School Lunch Program's free lunch program ("NSLP"), and Temporary Assistance for Needy Families ("TANF").

In contrast, under California's current eligibility criteria,<sup>4</sup> (which will continue to be in effect on December 2, 2016 and beyond, indefinitely, until the CPUC acts), eligibility can be established through participation in any one of a total of 17 programs, as follows:

Medicaid/Medi-Cal, LIHEAP, SSI, FPHA, CalFresh, Food Stamps or SNAP, Women, Infants and Children Program ("WIC"), National School Lunch Program ("NSL"), Temporary Assistance for Needy Families ("TANF"), California Work Opportunity and Responsibility to Kids ("CalWORKs"), Stanislaus County Work Opportunity and Responsibility to Kids ("StanWORKs"), Welfare-to-Work ("WTW"), Greater Avenues for Independence ("GAIN"),

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<sup>3</sup> Participation in these veterans pension programs is a new source of default program-based federal eligibility pursuant to the *Lifeline Modernization Order*.

<sup>4</sup> See <http://www.cpuc.ca.gov/General.aspx?id=2752#qualify>.

Tribal TANF, Bureau of Indian Affairs General Assistance, Head Start Income Eligible (Tribal Only), and Food Distribution Program on Indian Reservations.

In addition to federal-state incongruities in program-based eligibility schemes, the federal and California income guidelines used to establish income-based eligibility are also different now as well as under the federal revised rules. California's existing income guidelines include slightly more eligible households than the federal guidelines due to differences in the income levels that vary based on the number of individuals in a household.

**B. Eligibility Misalignment Would Be Devastating for California Providers and Customers.**

Misalignment is a troubling prospect for California providers and customers, because, for one, federal funding will be lost for certain California LifeLine customers. To date, the CPUC has not implemented the *Lifeline Modernization Order*, nor has it put in place any type of replacement funding to make up the difference for those customers who are poised to lose federal eligibility. As such, it remains unclear whether, how, or to what extent the CPUC will compensate providers for the soon-to-be-unrecoverable portion of the cost of serving those customers. If this situation is not resolved, providers will be left with no choice but to pursue significant increases in their Lifeline rates to the detriment of certain low-income Californians.

In addition, if divergent eligibility criteria are allowed to come to pass, the administrative complexity and burden of determining subscriber eligibility pursuant to two programs will result in a high degree of customer confusion, dissatisfaction, and very likely, attrition in participation. As the Petition accurately points out:

[D]ifferences between federal and state eligibility criteria could potentially require providers to manage three different sets of Lifeline subscribers: those eligible for both federal and state discounts, those eligible for only the federal discount (such as a subscriber relying on Veterans and Survivors Pension Benefit or purchasing stand-alone broadband), and those eligible for only the state discount (such as a subscriber relying on a state program or higher income threshold).

*Petition*, at 3-4. Adding this degree of complexity to an already complicated application and eligibility determination/verification process would create a system that is difficult for providers and the state to administer. As the *Petition* further explains:

In addition to trying to create and accommodate these varying applications and benefits, Lifeline providers will have to rework both back office and customer-facing processes, rate plans, IT systems, and financial reporting mechanisms....Reworking all these processes is an unnecessary expense for what may only be a short time period before a state brings its program into alignment with the federal rules.

*Petition*, at 4. This administrative chaos resulting from eligibility misalignment will likely directly hurt customers:

Confronting a customer with three different sets of eligibility options, each tied to a different level of benefit, or worse presenting three different application forms that differ in eligibility criteria and discount level, will greatly increase the likelihood of customer confusion. This will lead to increased customer dissatisfaction and contacts with providers, and potentially additional confusion as customers seek to switch the basis for their eligibility to maximize their benefits.

*Id.* By granting the limited waiver requested by the *Petition*, the FCC can avoid the otherwise imminent situation in which the sustainability of Lifeline is jeopardized by untenable levels of administrative disarray, unnecessary expense, and customer confusion.

**C. Eligibility Misalignment is Now Inevitable in California Absent Waiver.**

At this point, it would be impossible for the CPUC to implement the FCC's revised eligibility rules and related aspects of the *Lifeline Modernization Order* in California on or before December 2, 2016 without running afoul of its procedural mechanisms. Changes to the state LifeLine program of this significance are accomplished through the CPUC's formal decision process, commencing with a proposed decision and culminating at least 30-days later with the majority consensus of the Commissioners on a final version of the proposed decision. The decision is then effective as of the date of the CPUC's business meeting during which the final version of the decision is approved. The last CPUC business meeting before December 2, 2016 is scheduled for November 10th and, pursuant to the CPUC's rules, a draft proposed decision would have had to have been issued by October 11, 2016 to accommodate the 30-day

comment period between the proposed decision and the November 10th meeting. To-date, no proposed decision has been issued by the CPUC on any subject stemming from the *Lifeline Modernization Order*, including the FCC's revision of its eligibility rules.

Indeed, in recent proceedings to discuss potential adjustments to the state program, CPUC staff have acknowledged that the CPUC will not implement the FCC's revised eligibility rules by December 2, 2016. In fact, the CPUC and its LifeLine staff plan to file their own petition for waiver, similar to the Petition, on behalf of California and directed to the revised eligibility rules, *inter alia*, in the coming days. It is now abundantly clear that California will not be in alignment with the revised federal Lifeline rules by December 2, 2016.

**D. Good Cause Exists to Grant the Petition Because it is in the Public Interest and Narrowly Focused in Scope.**

Ample good cause exists to grant the Petition because, as outlined above and as described at-length in the Petition, the impending federal-state misalignment in eligibility rules will lead to serious difficulties for providers and customers. Providers will be discouraged from staying in and/or entering the Lifeline marketplace in California if the program is overly-complicated and presents significant funding uncertainties and disincentives. In turn, low-income Californians will have fewer, less-competitive choices when it comes to sourcing service. Eventually, some low-income Californians stand to lose Lifeline support altogether if providers cannot be fully reimbursed for serving those customers who will no longer be eligible for federal support. Taken together, these conditions will lead to a less robust Lifeline program in California, overall, with less-satisfied customers and fewer participating households. For all these reasons, the waiver is squarely in the public interest and should be granted.

The requested waiver is also in the public interest because it is narrowly-crafted to address and cure only the most urgent of substantive issues facing California as a result of the *Lifeline Modernization Order*, the misalignment of eligibility criteria. The requested waiver is circumscribed in scope to target only those rules giving rise to the federal-state misalignment of eligibility criteria, namely, sections 54.400(j) and 54.409(a) and related provisions of the *Lifeline*

*Modernization Order.*

Moreover, the waiver endeavors to avoid eligibility misalignment with all its attendant difficulties for Californians in a manner that is logically limited in time. The requested waiver is of a reasonable and not-excessive duration specially calibrated to allow the procedural processes at the state level to run their usual course. The requested waiver would expire within the earlier of: (1) 18 months from its grant; or (2) 60 days after the state notifies the FCC and all eligible telecommunications carriers ("ETCs") in the state that it has aligned its eligibility criteria with the federal criteria. Also, the requested waiver is of sufficient duration to allow the FCC and USAC to make progress on the National Verifier Plan and issue one or more National Verifier Implementation Updates before the National Verifier is scheduled to be deployed in California on December 31, 2017.<sup>5</sup>

Finally, the requested waiver is limited in jurisdictional scope. The waiver is specifically designed to take effect only in those states where a misalignment of eligibility criteria exists and poses serious risks for providers and customers. As the Petition describes:

[M]isalignment in eligibility criteria creates a significant implementation issue for providers and will lead to customer confusion in two categories of states: 1) those with a state Lifeline discount (either a monthly recurring discount or a one-time waiver of specific charges) and in which the provider makes eligibility determinations; and 2) those with a state discount and in which a third party, such as the utility commission or a third party administrator, makes the eligibility determination.

*Petition* at 2-3. The Petition further expressly excludes those states unlike California "that have never adopted specific eligibility criteria for Lifeline at the state level, as well as those with

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<sup>5</sup> The *Lifeline Modernization Order* directs the Universal Service Administrative Company ("USAC") to establish a National Verifier, consisting of a number of databases, tools, personnel, and processes to manage the enrollment, verification and disbursement processes. By December 1, 2016, USAC is ordered to submit the Draft National Verifier Plan to the Consumer and Governmental Affairs Bureau ("Bureau") and Office of the Managing Director ("OMD"). After their approval of the Plan, USAC will submit a National Verifier Implementation Update to the Bureau and OMD on or before July 31st and January 31st of each year until implementation is complete. The *Lifeline Modernization Order* sets forth that USAC will deploy the National Verifier in California and four other states by December 31, 2017.



misaligned criteria that have no state-mandated Lifeline discount and no third party decision maker for eligibility...." *Id.* at 2, n. 3.

### III. CONCLUSION.

The Petition seeks a judicious and well-reasoned waiver that will go far to resolve the coming crisis in California and similarly-situated states if the FCC's revised rules are effective on December 2, 2016 as currently scheduled. For all the foregoing reasons, the California Small LECs strongly encourage the FCC to carefully consider the Petition and to grant it in full.

Dated this 21st day of October, 2016.

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